

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-219580 **DATE:** September 27, 1985
MATTER OF: Dwain Fletcher Company

DIGEST:

Protester's objection to employee staffing levels contained in in-house estimate for Office of Management and Budget A-76 cost comparison is dismissed. Agency determination of employee staffing levels necessary to perform the work is a management decision that will not be reviewed by GAO except for fraud or bad faith.

Dwain Fletcher Company protests the Department of the Army's decision to cancel request for proposals (RFP) No. DABT02-85-R-0006, for the operation of a training and audiovisual support center at Fort McClellan, Alabama. We deny the protest.

The RFP was issued as part of a cost comparison pursuant to Office of Management and Budget (OMB) Circular A-76 to determine whether it would be more economical to contract for the services or to continue to have the services performed with in-house personnel. The Army found Fletcher's proposal to be the most advantageous to the government of the four offers received in response to the solicitation. The Army canceled the solicitation, however, after determining that the work could be performed by government personnel at a total cost of \$5,245,794, which was lower than Fletcher's total cost of \$5,669,040.

Fletcher filed a timely administrative appeal of the Army's decision. The appeals board found some errors in the comparison and the consequent adjustments reduced the estimated advantage of in-house performance to \$34,373 (\$5,666,011 in-house versus \$5,700,384 contract costs). However, since in-house performance remained the lower-cost alternative, the Army denied the appeal.

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Fletcher now contends that despite the adjustments the Army made as a result of the appeal, the cost comparison remains inaccurate, misleading, and inconsistent with Circular A-76 policy and procedures. Specifically, Fletcher advances two grounds of protest.

First, Fletcher contends that eight positions which the Army has retained as full-time government employees (residual staff performing governmental-in-nature (GIN) functions) are an excessive number; that the GIN residuals, in fact, would contribute some of their time to accomplish the performance work statement (PWS) under this RFP, and that the presence of this excessive GIN residual staff permitted the Army to make sizeable personnel reductions in its in-house staff. Fletcher thus maintains that the Army simply does not have adequate staffing to accomplish certain areas of work contained in the PWS and that this inadequacy results in an understated in-house cost estimate. Second, Fletcher contends that the Army improperly failed to adjust the cost comparison for certain travel costs involving the use of a government vehicle.

Our Office will review protests concerning agency decisions to continue performing services in-house instead of contracting for them, solely to ascertain whether the agency adhered to the established procedures for the in-house/out-house cost comparison. Joule Maintenance Corp., B-208684, Sept. 16, 1983, 83-2 CPD ¶ 333. To succeed in its protest, a protester must demonstrate both that the agency failed to follow the established procedures and that this failure could have materially affected the outcome of the cost comparison. See Serv-Air, Inc.; AVCO, 60 Comp. Gen. 44 (1980), 80-2 CPD ¶ 317.

The Army reports that the determination of the number of residual staff and the number of total employees needed to accomplish the PWS was the result of a detailed Army management study to identify the least costly manner of performing the work in the PWS. The Army contends that this determination represents a pure management decision which is not subject to administrative appeal under the provisions of Circular A-76. The Army states that the residual staffing level is not considered excessive and that none of these employees would perform any work included in the PWS. The Army also believes that the number of employees assigned to accomplish the PWS is adequate and represents its best management judgment.

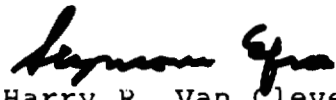
Generally, a management study is mandatory under the provisions of Circular A-76. See OMB Circ. No. A-76 Supp., pt. III-1 (Aug. 1983). The in-house staffing estimate is a part of the management study and represents the most efficient and effective in-house organization to accomplish the requirements. OMB Circ. No. A-76, Supp., pt. IV-7. Further, where a cost comparison results in a decision to perform the work in-house, the estimated in-house staffing plan, in fact, must be implemented. OMB Circ. No. A-76 Supp., pt. I-12.

Fletcher and the Army clearly disagree as to the level of staffing necessary to perform the work in-house. We have recognized, however, that the projection by an agency of personnel changes resulting from a conversion is largely a judgmental matter. Mercury Consolidated, Inc., 63 Comp. Gen. 411 (1984), 84-1 CPD ¶ 612. Similarly, we believe that a determination by an agency of the size of a GIN residual staff and the number of employees required to generally accomplish the PWS is largely a management decision involving judgmental matters that are inappropriate for our review. Rather, we think the agency should be free to make its own management decisions on staffing levels so long as they are not made fraudulently or in bad faith and so long as the subsequent cost comparison is done in accordance with the established procedures.

Here, the agency conducted the required management study and determined, in its best judgment, the staffing levels required both in total and for specific functions, offices, and suboffices. The mere fact that Fletcher disagrees with the results of the study clearly does not demonstrate fraud or bad faith on the agency's part. Moreover, the protester has presented no evidence to rebut the Army's assertion that the GIN residual staff will not perform any tasks covered by the PWS. In this connection, we note that the offerors in this case were also required to estimate appropriate staffing levels. Indeed, while Fletcher criticizes the agency for only estimating 39.5 positions to accomplish the PWS, Fletcher itself only proposed 36.6. Although the protester proposed a different mix and use of staff and contends that this justifies its lower staffing level, we believe it merely demonstrates the highly judgmental nature of such decisions. Accordingly, Fletcher has not shown fraud or bad faith in the Army's determination to employ the staffing levels that it did, and this portion of its protest is dismissed.

As stated previously, Fletcher also protests that the Army failed to properly adjust the cost comparison for certain travel costs involving the use of a government vehicle. Fletcher argues that corrections based on this error would result in increasing the government estimate by \$12,438.97. In addition, in its comments on the agency report, Fletcher requested an adjustment of \$9,330.37 for certain overtime expenses in the installation's photography laboratory. However, since the difference remaining between the Army's and Fletcher's total figures is greater than these alleged errors, it would not affect the evaluation result. See ARA Services, Inc., B-211710, Jan. 23, 1984, 84-1 CPD ¶ 93.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel